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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *M. Clark*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEADERSHIP STUDIES, INC.,

Plaintiff,

v.
BLANCHARD TRAINING AND
DEVELOPMENT,
INCORPORATED, AND DOES 1-10,
INCLUSIVE,

Defendants.

BLANCHARD TRAINING AND
DEVELOPMENT,
INCORPORATED,

Counterclaim-
Plaintiff,

v.

LEADERSHIP STUDIES, INC.,

Counterclaim-
Defendant.

CASE NO. 15-cv-1831-WQH-KSC

ORDER

HAYES, Judge:

The matter before the Court is the Motion for Summary Judgment on Claim Seven filed by Defendant and Counterclaim-Plaintiff Blanchard Training and Development, Inc. (ECF No. 42).

I. Background

On August 17, 2015, Leadership Studies, Inc. (“Leadership”) filed a Complaint

1 in this Court against Blanchard Training and Development, Incorporated (“Blanchard
2 Inc.”). (ECF No. 1). On November 7, 2016, Leadership filed a Third Amended
3 Complaint (the “TAC”) containing nine claims for relief. (ECF No. 49). The TAC is
4 the operative complaint in this matter. The allegations in the TAC generally arise from
5 a dispute related to Blanchard Inc.’s alleged use of intellectual property allegedly
6 owned by Leadership. Leadership’s seventh cause of action is for “Copyright
7 Infringement Under 17 U.S.C.A. §§501, *et seq.* Against Blanchard [Inc].” (ECF No.
8 49 at 21).

9 On March 29, 2017, Blanchard Inc. filed a Motion for Summary Judgment on
10 Claim 7 for Copyright Infringement Based on Ownership and Chain-of-Title (the
11 “Motion for Summary Judgment”). (ECF No. 63). Blanchard Inc. moves this Court
12 to “grant summary judgment in its favor on [Leadership’s] Seventh Cause of Action for
13 Copyright Infringement on the narrow issue of gaps in [Leadership’s] chain-of-title.”¹
14 *Id.* at 2. Blanchard Inc. contends that it is entitled to summary judgment on
15 Leadership’s copyright infringement claim because Leadership “is unable to prove a
16 chain-of-title for the works now asserted in its copyright claim.” (ECF No. 63-1 at 5).

17 On April 17, 2017, Leadership filed an Opposition to the Motion for Summary
18 Judgment. (ECF No. 66). Leadership contends that summary judgment should not be
19 granted because (1) there is sufficient evidence that Leadership owns the works
20 mentioned in the Motion for Summary Judgment, *Id.* at 23, and (2) Leadership has
21 clear chain-of-title to an infringed-upon work that was not discussed in the Motion for
22 Summary Judgment. *Id.* at 18.

23 On April 24, 2017, Blanchard Inc. filed a Reply in support of the Motion for
24 Summary Judgment renewing its contentions in the Motion for Summary Judgment.
25 ECF No. 76.

26
27 ¹ To the extent Blanchard contends that this Court should grant summary
28 judgment for any reason other than “gaps in [Leadership’s] chain-of-title,” (ECF No.
63 at 2), the Court declines to address those contentions as not properly raised in
Blanchard’s Motion for Summary Judgment.

1 **II. Facts**

2 Paul Hersey and Ken Blanchard worked together at Ohio University in the
3 1960s. (ECF No. 66-5, Response to Statement of Undisputed Material Facts
4 (“RSUMF”), at ¶ 4). Dr. Hersey and Dr. Blanchard both worked on “a theory
5 concerning a methodology for leaders to influence others based on their readiness for
6 a particular task, which came to be known as ‘Situational Leadership.’” *Id.* at ¶ 5. Dr.
7 Hersey and Dr. Blanchard co-authored numerous literary works on the topic, *Id.* at ¶
8 6., including:

- 9 1. *Leader Behavior*, © 1967 Management Education & Development,
10 Inc.; *Id.* at ¶ 30;
- 11 2. “Life Cycle Theory of Leadership,” *Training and Development*
12 *Journal*, © 1969 American Society for Training and Development; *Id.* at
13 ¶ 31;
- 14 3. “Leadership Effectiveness and Adaptability Description,” © 1973 Paul
15 Hersey and Kenneth H. Blanchard; *Id.* at ¶ 11; and
- 16 4. *Management of Organizational Behavior*, 3rd ed., © 1977 Prentice-
17 Hall, Inc.; *Id.* at ¶ 9.

18 Dr. Hersey also wrote his own works on the topic, including his 1975 Doctoral
19 Dissertation for the University of Massachusetts, Amherst, (ECF No. 66 at 9), and a
20 1984 book titled *The Situational Leader*. RSUMF at ¶ 33.

21 In 1976, Dr. Hersey incorporated Management Education & Development, Inc.
22 (“MED”). *Id.* at ¶ 12. In 1979, Dr. Hersey incorporated another company, Leadership
23 Studies Productions, Inc., which changed its name to Leadership Studies in July 1985.
24 RSUMF at ¶ 15. In September 1985, MED and Leadership Studies entered into an
25 “Agreement of Merger” under which MED merged into Leadership Studies and
26 Leadership Studies “succeed[ed], without other transfers, to all the rights and property
27 of [MED].” (ECF No. 63-10 at 12). In 2009, Leadership Studies changed its name to
28 Leadership Studies, Inc. RSUMF at ¶ 15. Leadership Studies, Inc. (“Leadership”) is

1 the Plaintiff and Counter-Defendant in this action.

2 In 1978, Dr. Blanchard incorporated Blanchard Inc. to “provide management
3 training . . . [using] the concepts that he had worked on with Dr. Hersey.” (ECF No.
4 63-1 at 7 (alteration in original)).

5 **III. Legal Standard for Summary Judgment**

6 “A party may move for summary judgment, identifying each claim or defense—or
7 the part of each claim or defense—on which summary judgment is sought. The court
8 shall grant summary judgment if the movant shows that there is no genuine dispute as
9 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
10 Civ. P. 56(a). A material fact is one that is relevant to an element of a claim or defense
11 and whose existence might affect the outcome of the suit. *See Matsushita Elec. Indus.*
12 *Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The materiality of a fact
13 is determined by the substantive law governing the claim or defense. *See Anderson v.*
14 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317,
15 322-24 (1986).

16 The moving party has the initial burden of demonstrating that summary
17 judgment is proper. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 153 (1970). The
18 burden then shifts to the opposing party to provide admissible evidence beyond the
19 pleadings to show that summary judgment is not appropriate. *See Anderson*, 477 U.S.
20 at 256; *Celotex*, 477 U.S. at 322, 324. The opposing party’s evidence is to be believed,
21 and all justifiable inferences are to be drawn in its favor. *See Anderson*, 477 U.S. at
22 255. To avoid summary judgment, the opposing party cannot rest solely on conclusory
23 allegations of fact or law. *See Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986).
24 Instead, the nonmovant must designate which specific facts show that there is a genuine
25 issue for trial. *See Anderson*, 477 U.S. at 256.

26 **IV. Discussion**

27 To state a claim for copyright infringement, a plaintiff must allege: “(1)
28 ownership of a valid copyright, and (2) copying of constituent elements of the work

1 that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).
2 “A transfer of copyright ownership, other than by operation of law, is not valid unless
3 an instrument of conveyance, or a note or memorandum of the transfer, is in writing
4 and signed by the owner of the rights conveyed or such owner’s duly authorized agent.”
5 17 U.S.C. § 204(a); *see also Radio Television Espanola S.A. v. New World Entm’t, Ltd.*,
6 183 F.3d 922, 929 (9th Cir. 1999) (“Section 204(a) has a simple requirement . . . put
7 it in writing.”).

8 Leadership bases its claim for copyright infringement in the TAC on “original
9 elements” contained in the following five literary works:

- 10 1. “Leadership Effectiveness and Adaptability Description,”
- 11 2. “Life Cycle Theory of Leadership,” *Training and Development*
12 *Journal*, May 1969,
- 13 3. *Management of Organizational Behavior* (3rd ed.),
- 14 4. *Leader Behavior*, and
- 15 5. *The Situational Leader*.

16 (ECF No. 63-1 at 9-10).

17 **A. “Leadership Effectiveness and Adaptability Description”**

18 Leadership stated in its Response to the Motion for Summary Judgment that it
19 is “no longer pursu[ing] ‘Leadership Effectiveness and Adaptability Description’” in its
20 copyright claim.” (ECF No. 66 at 23).

21 **B. “Life Cycle Theory of Leadership” and *Management of Organizational*
22 *Behavior* (3rd ed.)**

23 Blanchard Inc. contends that the undisputed facts show that Leadership does not
24 own the copyrights for “Life Cycle Theory of Leadership” and *Management of*
25 *Organizational Behavior* (3rd ed.) because Leadership was never an owner of the
26 copyright for these works and “has not and cannot show . . . assignments from the
27 copyright owners.” (ECF No. 63-1 at 17-18). Leadership contends that Blanchard Inc.
28 has not carried its burden to show that Leadership does not own the copyrights to these

1 works in light of (1) a 1992 letter from Dr. Blanchard to Dr. Hersey, (2) a licensing
2 agreement between Leadership and Blanchard Inc., and (3) a licensing agreements
3 between Leadership and Pearson Education. (ECF No. 66 at 24-27). Blanchard Inc.
4 contends that these documents do not “specifically identify copyrights allegedly
5 acquired in a writing signed by” the original owners of the copyrights. (ECF No. 76
6 at 9).

7 “Pre-1976 copyright law recognized a freelance author’s copyright in a published
8 article only when the article was printed with a copyright notice in the author’s name.”
9 *New York Times Co., Inc. v. Tasini*, 533 U.S. 483, 494 (2001). “Life Cycle Theory of
10 Leadership” was included in the May 1969 issue of the *Training and Development*
11 *Journal*, which contained the copyright notice “Copyright 1969 American Society for
12 Training and Development, Inc.” RSUMF at ¶ 31. There is no evidence in the record
13 that “Life Cycle Theory of Leadership” was printed with a copyright notice in the
14 authors’ names. The evidence in the record establishes that the American Society for
15 Training and Development, Inc. (the “ASTD”) initially owned the copyright for “Life
16 Cycle Theory of Leadership.”

17 There is no evidence in the record of an “instrument of conveyance, or a note or
18 memorandum of the transfer” of the copyright for “Life Cycle Theory of Leadership”
19 “in writing and signed by” the ASTD.² 17 U.S.C. § 204(a). Leadership contends that
20 a letter from Dr. Blanchard to Dr. Hersey and licensing agreements between Leadership
21 and Blanchard Inc. and Leadership and Pearson Education provide sufficient written
22 evidence that this copyright was transferred to Leadership. (ECF No. 66 at 24-27).
23 However, none of those documents are signed by ASTD.

24 The original copyright claimant for *Management of Organizational Behavior* (3rd
25

26 ² Even if the copyright notice for the May 1969 issue of the *Training and*
27 *Development Journal* did not result in the ASTD owning the copyright for “Life Cycle
28 Theory of Leadership,” and it belonged to Dr. Hersey and Dr. Blanchard, the
undisputed evidence still establishes that Leadership does not own the copyright
because there is no evidence of a written assignment of that copyright signed by Dr.
Hersey or Dr. Blanchard.

1 ed.) was Prentice-Hall, Inc. RSUMF at ¶ 9. The renewal owners for the current
2 renewal registration, which occurred in 2005 pursuant to 17 U.S.C. 304(a), are Dr.
3 Hersey and Dr. Blanchard. *Id.* There is no evidence in the record of an “instrument of
4 conveyance, or a note or memorandum of the transfer” of the copyright for
5 *Management of Organizational Behavior* (3rd ed.) “in writing and signed by” Prentice-
6 Hall, Inc. or Dr. Hersey. 17 U.S.C. § 204(a). The letter from Dr. Blanchard to Dr.
7 Hersey, which was written in 1992, is not evidence that Dr. Blanchard transferred his
8 copyright for this work as Dr. Blanchard did not own the copyright until 2005.

9 Blanchard Inc. is entitled to summary judgment on Leadership’s copyright
10 infringement claims based on “Life Cycle Theory of Leadership” and *Management of*
11 *Organizational Behavior* (3rd ed.) because the undisputed facts in the record show that
12 Leadership does not own the copyrights for those works.

13 **C. Leader Behavior and The Situational Leader**

14 Blanchard Inc. contends that Leadership’s copyright claim based on *Leader*
15 *Behavior* fails because the model it contains “has little (if any) originality in expression
16 in view of the earlier . . . models.” *Id.* at 16-17. Blanchard Inc. contends that
17 Leadership’s copyright claim based on *The Situational Leader* “must fail due to chain
18 of title problems and the fact that [Leadership] does not own the original elements: .
19 . . The copyright in [*The Situational Leader*] did not provide [Dr. Hersey] or
20 [Leadership] (as copyright claimant) exclusive rights to preexisting materials . . .
21 incorporated within the diagram.” (ECF No. 63-1 at 20). Leadership contends that its
22 copyright claim based on *Leader Behavior* should survive Blanchard Inc.’s Motion for
23 Summary Judgment on the issue of Leadership’s chain-of-title because Blanchard Inc.
24 “does not dispute chain of title to this work.” (ECF No. 66 at 24).

25 Blanchard Inc. has not carried its burden of demonstrating that it is entitled to
26 summary judgment on the grounds that Leadership cannot show chain of title to the
27 copyrights for *Leader Behavior* and *The Situational Leader*. Blanchard Inc. has
28 provided no evidence establishing the owner of the copyrights for *Leader Behavior* or

1 1 The *Situational Leader*. Compare ECF No. 63-1 at 18 and 19 (pointing to evidence
2 that establishes the owner of the copyright for “Life Cycle Theory of Leadership” and
3 *Management of Organizational Behavior* (3rd ed.)) with ECF No. 63-1 at 17 and 20
4 (pointing to no evidence concerning the ownership of the copyrights for *Leader*
5 *Behavior* and *The Situational Leader*).

6 While Blanchard Inc. takes issue with the originality of certain material in
7 *Leader Behavior* and *The Situational Leader*; *see id.* at 17 (contending that a figure in
8 *Leader Behavior* “has little (if any) originality in expression”); *id.* at 19 (contending
9 that Leadership “does not own the original elements” of a figure in *The Situational*
10 *Leader*, not that Leadership does not own the copyright to the work); Blanchard Inc.’s
11 motion for summary judgment was “on the narrow issue of gaps in [Leadership’s]
12 chain-of-title.” ECF No. 63. As a result, arguments concerning the originality of
13 *Leader Behavior* and *The Situational Leader* are irrelevant.

14 **D. The Dissertation.**

15 In its Response to the Motion for Summary Judgment, Leadership contends that
16 this Court should not grant summary judgment because Leadership has clear chain-of-
17 title to Dr. Hersey’s Doctoral Dissertation (the “Dissertation”). (ECF No. 66 at 18).
18 Blanchard Inc. contends that Leadership cannot rely on the Dissertation to defeat the
19 Motion for Summary Judgment because “there was no mention of [the Dissertation] in
20 any of [Leadership’s] four complaints or in any of [Leadership’s] interrogatory
21 responses.” (ECF No. 76 at 6). Blanchard Inc. contends that, in order to bring a claim
22 for copyright infringement based on material contained in a work, a plaintiff must at
23 least identify the work that contains the material. *Id.* at 13. Blanchard Inc. contends
24 that allowing Leadership to rely on the Dissertation would effectively permit “an
25 improper backdoor amendment to the Third Amended Complaint.” *Id.* at 8.

26 “A properly plead copyright infringement claim must allege 1) which specific
27 original works are the subject of the copyright claim” *Proline Concrete Tools, Inc.*
28 *v. Dennis*, No. 07-CV-2310-LAB-AJB (S.D. Cal. Aug 18, 2008) (quoting *Kelly v. L.L.*

1 Cool J., 145 F.R.D. 32, 36 (S.D.N.Y. 1992)). “[S]ummary judgment is not a procedural
2 second chance to flesh out inadequate pleadings.” *Wasco Prod., Inc. v. Southwall*
3 *Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) (quoting *Fleming v. Lind-Waldock &*
4 *Co.*, 922 F.2d 20, 24 (1st Cir. 1990)). Leadership did not identify the Dissertation as
5 a subject of its copyright claim in the TAC. *See* ECF No. 49 at 29-32. Therefore,
6 Leadership cannot rely on the Dissertation to support its copyright infringement claim
7 or to defeat Blanchard Inc.’s Motion for Summary Judgment.

8 **E. Blanchard Inc.’s Request for Attorney’s Fees**

9 The Copyright Act authorizes courts to “award a reasonable attorney’s fee to the
10 prevailing party.” 17 U.S.C. § 505. Blanchard Inc.’s Motion for Summary Judgment
11 is denied in part. *See infra* Part VI. Therefore, Blanchard Inc. is not entitled to
12 attorney’s fees under 17 U.S.C. § 505.

13 **F. Leadership’s Request for Sanctions**

14 Leadership requested that this Court sanction Blanchard Inc. for addressing its
15 Motion for Summary Judgment to the works mentioned in the TAC, rather than the
16 Dissertation. Because Blanchard Inc. properly addressed the allegations in the TAC,
17 Leadership’s request for sanctions is without merit.

18 **V. Conclusion**

19 IT IS HEREBY ORDERED that Blanchard Inc.’s Motion for Summary
20 Judgment (ECF No. *63*) is GRANTED as to the claims for relief in Leadership’s
21 seventh cause of action based on original material contained in “Leadership
22 Effectiveness and Adaptability Description,” “Life Cycle Theory of Leadership,”
23 *Management of Organizational Behavior* (3rd ed.), and the Dissertation and DENIED
24 as to Leadership’s claims based on original material contained in *Leader Behavior* and
25 *The Situational Leader*.

26 DATED:

27 9/25/17


WILLIAM Q. HAYES
United States District Judge